

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

HENRY VICTOR BUTCHER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE

Defendant

§
§
§
§
§
§
§
§
§
§

CAUSE NO.: EP-20-CV-165

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES HENRY VICTOR BUTCHER, Plaintiff in the above-entitled and numbered cause, complaining of and about Defendant UNITED STATES POSTAL SERVICE (hereinafter as necessary "Defendant USPS"). Plaintiff, in support thereof, would show as follows:

PARTIES

1. Plaintiff, HENRY VICTOR BUTCHER, is an individual who resides in El Paso, Texas and is a citizen of the State of Texas.
2. Defendant, UNITED STATES POSTAL SERVICE, is a governmental entity which may be served with process by serving Thomas J. Marshall, General Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC, 20260-1100., by certified mail, return receipt requested, pursuant to 39 CFR § 2.2.

JURISDICTION

3. Suit is brought for money damages for personal injury and damage to property caused by the negligent or wrongful act or omission of an employee of the United States Postal Service while acting within the scope of his office or employment and this Court has jurisdiction over this cause of action pursuant to the Federal Torts Claims Act, 28 U.S.C. §§1346(b), 2671 et seq.

VENUE

4. A substantial part of the events or omissions giving rise to the claim occurred in this District and venue is proper in this District pursuant to 28 U.S.C. §1391(e)(1).
5. The United States Postal Service (hereinafter "USPS"), at all relevant times herein, was a "federal agency" within the meaning of 28 U.S.C. §2671.

BACKGROUND AND FACTS

6. Plaintiff's Standard Form 95 claim was filed/submitted on or about September 9, 2019 requesting bodily injury and property damages in the amount of Five Hundred Two Thousand Seven Hundred Thirty Five dollars and Fifty cents (\$502,735.50) pursuant to 28 U.S.C. §2675(a), concerning the injuries and damages which were tortiously caused to Plaintiff on or about October 12, 2018.
7. The government denied Plaintiff's administrative claim on March 31, 2020. See letter dated March 31, 2020 from Brittany Lindsay, Tort Claim Examiner/Adjuster attached as Exhibit "A."
8. The instant suit is duly commenced no later than six months after the denial of Plaintiff's claim. See 28 U.S.C. §2675(a) and 28 U.S.C. §2401.
9. Plaintiff, on or about October 12, 2018, was operating his motor vehicle westbound in the 7200 block of Cuba Dr.
10. At approximately the same time, Jose Francisco Duarte, in the course and scope of his employment Defendant USPS, was operating his motor vehicle, owned by Defendant USPS, eastbound in the 7200 block of Cuba Dr.
11. Mr. Duarte, traveling eastbound on Cuba Dr made an improper U-turn, cut in front of Plaintiff's vehicle and caused a collision.
12. The collision was investigated by an officer from the El Paso Police Department and Mr. Duarte was determined to at fault. Mr. Duarte was issued a citation for "Improper U-Turn." See Texas Peace Officer's Crash Report, attached hereto as Exhibit "B".
13. Plaintiff, as a result, sustained injuries and damages as set out in this complaint below.

NEGLIGENCE OF DEFENDANT'S EMPLOYEE
JOSE FRANCISCO DUARTE

14. Plaintiff alleges that the collision and resulting damages and injuries to him were proximately caused by one or more of the following alternative theories of negligence on the part of Jose Francisco Duarte in:

- A. Failing to keep such a proper outlook as a person of ordinary care would have kept;
- B. Making an improper U-turn as a person of ordinary care would not have done;
- C. Failing to drive as a person of ordinary care would have done;
- D. Driving at an excessive rate of speed as a person of ordinary care would not have done;
- E. Failing to control his speed as a person of ordinary care would have done;
- F. Failing to control his vehicle as a person of ordinary care would have done;
- G. Failing to turn his motor vehicle to avoid the collision as a person using ordinary care would have done;
- H. Failing to yield right of way to avoid the collision as a person using ordinary care would have done;
- I. Failing to make timely or proper application of the brakes on his motor vehicle as a person using ordinary care would have done;

15. Jose Francisco Duarte, an employee of Defendant USPS at the aforesaid time and place, was an agent, servant, or employee of Defendant USPS, was an "employee of the government" within the meaning of 28 U.S.C. §2671, was operating a motor vehicle owned by Defendant USPS with the express permission or consent of Defendant USPS and, as the agent, servant, and employee of Defendant USPS, was acting within the course and scope of his employment with Defendant USPS.

16. All negligence of the employee of Defendant USPS, while operating a motor vehicle owned by Defendant USPS and while acting within the course and scope of this employment with Defendant USPS, pursuant to 28 U.S.C. §1346(b), is imputed to Defendant USPS.

NEGLIGENCE OF DEFENDANT UNITED STATES POSTAL SERVICE

17. Defendant USPS owned the vehicle negligently operated by Jose Francisco Duarte. Defendant USPS

negligently entrusted the vehicle to a driver that was negligent and reckless. As a result of Defendant USPS negligently entrusting the vehicle to Jose Francisco Duarte, Plaintiff was harmed as specified above.

DAMAGES TO PLAINTIFF

18. Plaintiff, as a proximate and producing result of the collision and the above acts or omissions of Jose Francisco Duarte, an employee of Defendant USPS, sustained injuries to his head, ribs, a shattered ankle, fractured fibula and lacerations to his face, shoulders and other parts of his body in general. He has endured extensive medical treatment in an effort to alleviate his pain.
19. Plaintiff, as a direct and proximate result of the collision and the above acts or omissions of Defendant's employee, incurred the following damages:
 - A. Reasonable and necessary medical expenses incurred in the past;
 - B. Reasonable and necessary medical expenses which, in all reasonable probability, will be incurred in the future;
 - C. Physical pain sustained in the past;
 - D. Disfigurement;
 - E. Physical pain which, in all reasonable probability, will be sustained in the future;
 - F. Mental anguish sustained in the past;
 - G. Mental anguish which, in all reasonable probability, will be sustained in the future;
 - H. Physical impairment sustained in the past;
 - I. Physical impairment which, in all reasonable probability, will be sustained in the future; and,
 - J. Property damage to his vehicle that was involved in the instant collision.
20. Plaintiff is also entitled to pre-judgment and post-judgment interest at the maximum rate allowed by law.
21. Plaintiff, because of all of the above and foregoing, has been damaged and will be damaged in amounts deemed to be just and fair by the Court which are personal injuries in the amount of Five Hundred Thousand dollars and Zero cents (\$500,000.00) ; property damages in the amount of Two Thousand Seven Hundred Thirty Five dollars and Fifty cents (\$2,735.00); and, damages for loss of use of his

vehicle at the rate of Twenty-Five dollars and zero cents (\$25.00) per day, which are amounts within the jurisdictional limits of this Court for which Plaintiff now brings suit.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, HENRY VICTOR BUTCHER, respectfully demands judgment of and against Defendant USPS for bodily injury damages in the amount of Five Hundred Thousand dollars and Zero cents (\$500,000.00); property damages in the amount of Two Thousand Seven Hundred Thirty Five dollars and Fifty cents (\$2,735.00); and, damages for loss of use of his vehicle at the rate of Twenty-Five dollars and zero cents (\$25.00) per day; pre-judgment and post-judgment interest at the maximum rate allowed by law; court costs; and, and any other relief, at law or in equity, general or special, to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW FIRM OF DANIELA LABINOTI, P.C.

Attorneys for Plaintiff

707 Myrtle Avenue

El Paso, Texas 79901

(915) 581-4600

(915) 581-4605 (Facsimile)

Daniela@labinotilaw.com

/s/ Daniela Labinoti

DANIELA LABINOTI

Texas State Bar No. 24050900

EXHIBIT “A”

LAW DEPARTMENT
NATIONAL TORT CENTER



APR 03 2020

251517

10/12/2018

CERTIFIED NO. 7019 1120 0001 3255 0890
RETURN RECEIPT REQUESTED

March 31, 2020

Michael J. Gopin
Law Offices of Michael J. Gopin, PLLC
1300 N. El Paso Street
El Paso, TX 79902

Re: Your Client: Henry Butcher
Date of Incident: October 12, 2018
NTC File No.: NT201959842

Dear Mr. Gopin:

This is in reference to the administrative claim you filed on behalf of your above-referenced client under the provisions of the Federal Tort Claims Act as a result of injuries allegedly sustained on October 12, 2018.

In considering this claim, we evaluated the information available to us regarding your client's alleged damages. However, the amount of money you are demanding far exceeds the value the Postal Service places on this case. Accordingly, the above-referenced administrative claim is denied on the grounds that we were not able to reach a mutually satisfactory settlement of same.

In accordance with 28 U.S.C. § 2401(b) and 39 C.F.R. 912.9(a), if dissatisfied with the Postal Service's final denial of an administrative claim, a claimant may file suit in a United States District Court no later than six (6) months after the date the Postal Service *mailed* the notice of that final action. Accordingly, any suit filed in regards to this denial must be filed no later than six (6) months from the date of the mailing of this letter, which is the date shown above. Further, note the United States of America is the only proper defendant in a civil action brought pursuant to the Federal Tort Claims Act and such suit may be heard only by a federal district court.

Alternatively, and in accordance with the regulations set out at 39 C.F.R. 912.9(b), prior to the commencement of suit and prior to the expiration of the six (6) month period provided in 28 U.S.C. § 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request for reconsideration with the postal official who issued the final denial of the claim. Upon the timely filing of a request for

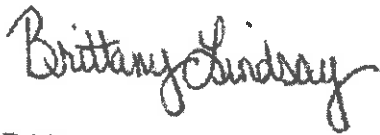
1720 MARKET STREET, ROOM 2403
ST. LOUIS, MO 63155-9948
TEL: 314/345-5820
FAX: 314/345-5893

- 2 -

reconsideration, the Postal Service shall have six (6) months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. § 2675(a) shall not accrue until six (6) months after the filing of the request for reconsideration.

A request for reconsideration of a final denial of a claim shall be deemed to have been filed when received in this office.

Sincerely,

A handwritten signature in cursive script that reads "Brittany Lindsay".

Brittany Lindsay
Tort Claim Examiner/Adjudicator

cc: Carol Aune
Tort Claims Coordinator
File No. 780-19-00407699A

EXHIBIT “B”

Law Enforcement and TxDOT Use ONLY

☐ FATAL ☐ CMV ☐ SCHOOL BUS ☐ RAILROAD9 ☐ SUPPLEMENT ☐ ACTIVE SCHOOL ZONETotal
Num.
Units

2

Total
Num.
Persons

2

TxDOT
Crash ID16676270.1
/2018475123

Texas Peace Officer's Crash Report (Form CR-3 1/1/2018)

Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714. Questions? Call 844/274-7457
Refer to Attached Code Sheet for Numbered Fields

*These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

Page 1 of 2

IDENTIFICATION & LOCATION

VEHICLE, DRIVER, & PERSONS

VEHICLE, DRIVER, & PERSONS

*Crash Date (MM/DD/YYYY) 10 / 12 / 2018		*Crash Time (24HRMM) 1 4 5 0		Case ID 18-285170		Local Use MVRC/81	
*County Name EL PASO				*City Name EL PASO			
In your opinion, did this crash result in at least \$1,000 damage to any one person's property?				Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Latitude (decimal degrees)	
ROAD ON WHICH CRASH OCCURRED				Longitude (decimal degrees)			
*1 Rdwy. Sys. LR		*Hwy. Num.		2 Rdwy. Part 1		Block Num. 7200	
3 Street Prefix		*Street Name CUBA		4 Street Suffix DR			
<input type="checkbox"/> Crash Occurred on a Private Drive or Road/Private Property/Parking Lot				<input type="checkbox"/> To's Road/ Toll Lane		Speed Limit 30	
Const. Zone <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Workers Present <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Street Desc.	
INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER							
At Int. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		1 Rdwy. Sys. LR		Hwy. Num.		2 Rdwy. Part 1	
Distance from Int. or Ref. Marker 10		<input type="checkbox"/> FT <input checked="" type="checkbox"/> MI		3 Dir. from Int. or Ref. Marker W		Reference Marker	
Street Desc.		Street Name WINSLOW		4 Street Suffix RD			
Unit Num. 1		5 Unit Desc 1		<input type="checkbox"/> Parked Vehicle <input type="checkbox"/> Hit and Run		LP State 98	
Veh. Year 1 9 9 3		6 Veh. Color WHI		Veh. Make GM		Veh. Model UNKNOWN	
8 DL/D Type 1		DL/D State TX		DL/D Num. 15467617		9 DL Class C	
10 CDL End. 96		11 DL Rest. 96		DOB (MM/DD/YYYY) 03 / 07 / 1974			
Address (Street, City, State, ZIP) 1626 VIA SECA CIR EL PASO, TX 79936							
Person Num. 1		12 Psn. Type 3		13 Seat Position		Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line	
14 Injury Severity N		Age 44		15 Ethnicity H		16 Sex 1	
17 Eject. 1		18 Restr. 1		19 Airbag 1		20 Helmet 97	
21 Sol. N		22 Alc. Spec. 96		23 Alc. Result		24 Drug Spec. 96	
25 Drug Result 97		26 Drug Category 97					
Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.							
<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee		Owner/Lessee Name & Address U.S. POSTAL SERVICE, 8401 BORING EL PASO, TX 79925					
Proof of Fin. Resp. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		26 Fin. Resp. Type 7		Fin. Resp. Name U.S. GOVERNMENT		Fin. Resp. Num. SELF INSURED	
Fin. Resp. Phone Num. (800) 275-8777		27 Vehicle Damage Rating 1 7 - B R - 2		27 Vehicle Damage Rating 2		Vehicle Inventoried <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Towed By Driver		Towed To Traffic					
Unit Num. 2		5 Unit Desc. 1		<input type="checkbox"/> Parked Vehicle <input type="checkbox"/> Hit and Run		LP State TX	
Veh. Year 2 0 1 0		6 Veh. Color RED		Veh. Make HYOSUNG		Veh. Model ST7	
8 DL/D Type 1		DL/D State TX		DL/D Num. 39344568		9 DL Class C	
10 CDL End. 96		11 DL Rest. 96		DOB (MM/DD/YYYY) 11 / 13 / 1964			
Address (Street, City, State, ZIP) 7439 YUMA EL PASO, TX 79915							
Person Num. 1		12 Psn. Type 5		13 Seat Position 1		Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line	
14 Injury Severity B		Age 53		15 Ethnicity W		16 Sex 1	
17 Eject. 97		18 Restr. 97		19 Airbag 97		20 Helmet 1	
21 Sol. N		22 Alc. Spec. 96		23 Alc. Result		24 Drug Spec. 96	
25 Drug Result 97		26 Drug Category 97					
Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.							
<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee		Owner/Lessee Name & Address BUTCHER, HENRY VICTOR, 7439 YUMA EL PASO, TX 79915					
Proof of Fin. Resp. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		26 Fin. Resp. Type		Fin. Resp. Name		Fin. Resp. Num.	
Fin. Resp. Phone Num.		27 Vehicle Damage Rating 1 1 2 - F D - 3		27 Vehicle Damage Rating 2		Vehicle Inventoried <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Towed By DEPENDABLE TOWING		Towed To 11615 RAILROAD EL PASO, TX 79934					

[illegible]